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OFFICE OF PETITIONS

In re Application of :  
Ken Rosenblum :  
Application Number: 10/706311 : DECISION ON PETITION  
Filing Date: 11/12/2003 :  
Attorney Docket Number: :  
1326.007US1 :

This is a decision on the petition filed on 18 September, 2007, under 37 CFR 1.137(b),<sup>1</sup> to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on 27 January, 2007, for failure to file a proper response to the final Office action mailed on 26 October, 2006, which set a three (3) month shortened statutory period for reply. An amendment after final rejection was filed on 26 January, 2007. However, on 10 July, 2007, a Advisory

<sup>1</sup> Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

Action Before the Filing of an Appeal Brief was mailed, stating that the reply filed on 26 January, 2007, fails to place this application in condition for allowance. Notice of Abandonment was mailed on 18 July, 2007.

A Request for Continued Examination, requesting that the previously filed submission under 37 CFR 1.116 be considered as the required submission under 37 CFR 1.114.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply.<sup>2</sup> The three (3)-month extension request filed on 18 September, 2007, was submitted more than three (3) months after the end of the period for reply to the Office action mailed on 26 October, 2006, and therefore is unnecessary. The extension of time fee will be refunded.

The statement contained in the instant petition does not set forth that the entire delay from the due date of the required reply to the date of the filing of a grantable petition was unintentional as required by 37 CFR 1.137(b)(3). However, the statement contained in the instant petition is being so construed. Petitioner **must** notify the Office if this is not a correct interpretation.

This application is referred to Technology Center Art Unit 3653 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions

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<sup>2</sup> See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988).